



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA-2018-0927; Amdt. No. 91-353B]

RIN 2120-AL76

Extension of the Prohibition Against Certain Flights in the Baghdad Flight Information

Region (FIR) (ORBB)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This action extends, for an additional two years, the prohibition against certain flight operations in the Baghdad FIR (ORBB) at altitudes below Flight Level 320 (FL320) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. The FAA finds this action necessary to address continuing hazards to persons and aircraft engaged in such flight operations due to the complex security environment that currently exists in the Baghdad FIR (ORBB) and the associated safety-of-flight hazards, as described in the preamble to this final rule. The FAA also republishes, with minor administrative revisions, the approval process and exemption information for this Special Federal Aviation Regulation (SFAR), consistent with other recently published flight prohibition SFARs.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Bill Petrak, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, D.C. 20591; telephone 202-267-8166; email bill.petrak@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action extends the expiration date of SFAR No. 77, title 14 Code of Federal Regulations (CFR), 91.1605, from October 26, 2022, until October 26, 2024. SFAR No. 77 prohibits certain flight operations in the Baghdad FIR (ORBB) at altitudes below Flight Level (FL) 320 by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. Consistent with other recently published flight prohibition SFARs, this action also republishes, with minor administrative revisions, the approval process and exemption information for this flight prohibition SFAR.

II. Authority and Good Cause

A. Authority

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. Sections 106(f) and (g) of title 49, U.S. Code (U.S.C.), subtitle I, establish the FAA Administrator's authority to issue rules on aviation safety. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise this authority consistently with the obligations of the U.S. Government under international agreements.

The FAA is promulgating this rule under the authority described in 49 U.S.C. 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight

of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of the FAA's authority because it continues to prohibit the persons described in paragraph (a) of SFAR No. 77, § 91.1605, from conducting flight operations in the Baghdad FIR (ORBB) at altitudes below FL320 due to the continuing hazards to the safety of U.S. civil flight operations, as described in the preamble to this final rule.

B. Good Cause for Immediate Adoption

Section 553(b)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Also, section 553(d) permits agencies, upon a finding of good cause, to issue rules with an effective date less than 30 days from the date of publication. In this instance, the FAA finds good cause to forgo notice and comment because notice and comment would be impracticable and contrary to the public interest. In addition, it is contrary to the public interest to allow this SFAR to expire.

The risk environment for U.S. civil aviation in airspace managed by other countries with respect to safety of flight is fluid in circumstances involving weapons capable of targeting or otherwise negatively affecting U.S. civil aviation, as well as other hazards to U.S. civil aviation associated with fighting, extremist and militant activity, or heightened tensions. This fluidity and the need for the FAA to rely upon classified information in assessing these risks makes providing notice and opportunity to comment impracticable and contrary to the public interest. The potential for rapid changes in the risks to U.S. civil aviation significantly limits how far in advance of a new or amended flight prohibition the FAA can usefully assess the risk environment. Furthermore, to the extent that these rules and any amendments are based upon classified information, the FAA cannot share such information with the general public. As a result, engaging in notice and comment would be impracticable.

Additionally, it is crucial that the FAA's flight prohibitions, and any amendments thereto, reflect the agency's current understanding of the risk environment for U.S. civil aviation. This allows the FAA to protect the safety of U.S. operators' aircraft and the lives of their passengers and crews without over-restricting U.S. operators' routing options. The delay that would be occasioned by providing an opportunity to comment on this action would mean that the resulting final action would not be based on the latest information about aviation risk in a fluid environment.

As described in the preamble to this rule, extending the flight prohibition for U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL320 is necessary due to continuing safety-of-flight hazards associated with multiple state and non-state actors conducting attacks in the Baghdad FIR (ORBB) in pursuit of various objectives. These attacks include military activity by state actors, as well as ongoing militia and terrorist attacks against the Government of Iraq and against U.S. and coalition interests co-located with civilian airports. Accordingly, the FAA finds good cause exists to forgo notice and comment and any delay in the effective date for this rule.

III. Background

On October 16, 2020, due to the complex security environment that existed in Iraq, the FAA published a final rule amending SFAR No. 77, § 91.1605, to prohibit U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL320.¹ Additionally, given that the security environment in Iraq remained fluid and tense, the FAA was concerned about the safety of U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes at and above FL320. As a result, NOTAM KICZ A0036/20, which prohibited U.S. civil aviation operations in the

¹ See Prohibition Against Certain Flights in the Baghdad Flight Information Region (FIR) (ORBB) final rule, 85 FR 65686, Oct. 16, 2020, for an in-depth discussion of the security environment in the Baghdad FIR (ORBB) at that time and the FAA's analysis of the associated risks to U.S. civil aviation operations.

Baghdad FIR (ORBB) at all altitudes remained in effect following publication of the October 16, 2020 final rule. This approach maintained flexibility for the FAA to revisit the all-altitude flight prohibition as necessary to determine whether U.S. civil aviation operations could occur safely in the Baghdad FIR (ORBB) at altitudes at or above FL320.

The FAA continued to monitor the security environment in the Baghdad FIR (ORBB) and associated risks to civil aviation safety. By October 2021, the FAA assessed the safety risks to U.S. civil aviation in the Baghdad FIR (ORBB) at altitudes at or above FL320 had diminished sufficiently that U.S. civil aviation could safely resume operations at those altitudes. Since the FAA issued NOTAM KICZ A0036/20 in March 2020, there had been no known threats or attempted attacks against aircraft operating at altitudes at or above FL320. Although ground-based attacks against U.S. and coalition forces in Iraq continued, and incidents involving weaponized unmanned aircraft systems (UAS) had risen significantly, those attacks posed no direct threat to civil aircraft overflying the Baghdad FIR (ORBB) at altitudes at or above FL320. Therefore, on October 22, 2021, the FAA rescinded NOTAM KICZ A0036/20. SFAR No. 77, 14 CFR 91.1605, remained in effect and continued to prohibit U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL320 due to the continued unacceptable risk to the safety of U.S. civil aviation operations at those altitudes.

IV. Discussion of the Final Rule

The FAA continues to assess the situation in the Baghdad FIR (ORBB) at altitudes below FL320 as presenting an unacceptable risk to the safety of U.S. civil aviation. Iranian-aligned militia groups (IAMGs) publicly threatened to attack coalition forces remaining in Iraq after December 31, 2020, and continue to demonstrate their capability and intent to attack U.S. and international interests in Iraq, as well as selected Iraqi government targets. On November 7, 2021, militants conducted a weaponized UAS attack against Iraqi Prime Minister Mustafa al-Kadhimi's residence in Baghdad. In January 2022, IAMGs conducted a series of attempted

attacks that were likely intended to commemorate the second anniversary of the deaths of Iranian Revolutionary Guard Corps (IRGC) Quds Forces Commander Qassem Soleimani and Iraqi Popular Mobilization Units Deputy Head Abu Mahdi al-Muhandis in a U.S. airstrike in January 2020. On January 3, 2022, IAMGs attempted to attack U.S. interests co-located with Baghdad International Airport (ORBI) with two weaponized UAS. Defensive counter-rocket, artillery, and mortar (C-RAM) systems thwarted the attack, with no reported casualties or damage. On January 4, 2022, militants unsuccessfully attempted an attack with two weaponized UAS against Ayn Al Asad Air Base (ORAA). On January 5, 2022, indirect rocket fire impacted the runway at Baghdad International Airport (ORBI) but did not cause any casualties.

IAMGs have access to UAS and anti-aircraft capable weapons systems, including the Iranian-produced 358 loitering hybrid surface-to-air missile (SAM)/UAS system, which present inadvertent risks to the safety of U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL320 and at potentially targeted airports. IAMGs likely lack the ability to conduct effective target identification and airspace de-confliction, increasing the risk of an accidental shoot down of a civil aircraft due to misidentification or misperception.

In addition, the FAA remains concerned about cross-border military activity. Both Iran and Turkey have previously conducted various no-notice, cross-border operations striking targets in northern Iraq using a variety of weapons, including short-range ballistic missiles, rockets, and weaponized UAS. In a recent example, on March 12, 2022, up to twelve Fateh-110 surface-to-surface ballistic missiles launched from western Iran and impacted near the construction site of the new U.S. consulate in Erbil, Iraq, and Erbil International Airport (ORER). Iranian officials claimed responsibility for the ballistic missile attack, allegedly carried out in response to the loss of two IRGC officials in an alleged third-party airstrike in Syria. The missile attack damaged surrounding buildings, but there were no reported casualties, according to the Kurdish Interior Ministry. The assessed points of impact were approximately 14km east/northeast of Erbil International Airport (ORER), based on available open-source reporting.

While this attack did not pose a direct threat to the airport, the missile trajectories possibly presented an inadvertent risk to aircraft in flight that might have been operating at low altitude in the vicinity of Erbil International Airport (ORER) during the time of the attack. In general, unannounced third-party cross-border operations in the Baghdad FIR (ORBB) present a low altitude safety-of-flight risk for aircraft flying in the vicinity of the targeted location(s) and for aircraft on the ground at airports co-located with, or in close proximity to, the intended targets. These activities also pose an airspace de-confliction challenge. Additionally, there continues to be an inadvertent risk to civil aviation operations in the Baghdad FIR (ORBB) from global positioning system (GPS) jammers.

Therefore, as a result of the significant, continuing risks to the safety of U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL320, the FAA extends the expiration date of SFAR No. 77, § 91.1605, from October 26, 2022, until October 26, 2024.

Further amendments to SFAR No. 77, § 91.1605, might be appropriate if the risk to U.S. civil aviation safety and security changes. In this regard, the FAA will continue to monitor the situation and evaluate the extent to which persons described in paragraph (a) of this rule might be able to operate safely in the Baghdad FIR (ORBB) at altitudes below FL320.

The FAA also republishes the details concerning the approval and exemption processes in Sections V and VI of this preamble, consistent with other recently published flight prohibition SFARs, to enable interested persons to refer to this final rule for comprehensive information about requesting relief from the FAA from the provisions of SFAR No. 77, § 91.1605.

V. Approval Process Based on a Request from a Department, Agency, or Instrumentality of the United States Government

A. Approval Process Based on an Authorization Request from a Department, Agency, or Instrumentality of the United States Government

In some instances, U.S. Government departments, agencies, or instrumentalities may need to engage U.S. civil aviation to support their activities in the Baghdad FIR (ORBB) at altitudes below FL320. If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person described in paragraph (a) of SFAR No. 77, § 91.1605, including a U.S. air carrier or commercial operator, to transport civilian or military passengers or cargo or conduct other operations in the Baghdad FIR (ORBB) at altitudes below FL320, that department, agency, or instrumentality may request the FAA to approve persons described in paragraph (a) of SFAR No. 77, § 91.1605, to conduct such operations.

The requesting U.S. Government department, agency, or instrumentality must submit the request for approval to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality.² The FAA will not accept or consider requests for approval from anyone other than the requesting U.S. Government department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval must be sufficiently positioned within the requesting department, agency, or instrumentality to demonstrate that the organization's senior leadership supports the request for approval and is committed to taking all necessary steps to minimize aviation safety and security risks to the proposed flights. The senior official must also be in a

² This approval procedure applies to U.S. Government departments, agencies, or instrumentalities; it does not apply to the public. The FAA describes this procedure in the interest of providing transparency with respect to the FAA's process for interacting with U.S. Government departments, agencies, or instrumentalities that seek to engage U.S. civil aviation to operate in the area in which this SFAR would prohibit their operations in the absence of specific FAA approval.

position to: (1) attest to the accuracy of all representations made to the FAA in the request for approval, and (2) ensure that any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requesting U.S. Government departments, agencies, or instrumentalities must submit requests for approval to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality wishes the operator(s) to commence the proposed operation(s).

The requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, D.C. 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the FAA grants the request for approval. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267-8166, to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons described in SFAR No. 77, § 91.1605, or for multiple flight operations. To the extent known, the letter must identify the person(s) the requester expects the SFAR to cover on whose behalf the U.S. Government department, agency, or instrumentality seeks FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service the person(s) covered by the SFAR will provide;
- To the extent known, the specific locations in the Baghdad FIR (ORBB) at altitudes below FL320 where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Baghdad FIR (ORBB) at altitudes below FL320 and the airports, airfields, or landing zones at which the aircraft will take off and land; and
- The method by which the requesting department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation

of how the operator will integrate this information into all phases of the proposed operations (i.e., the pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or its prime contractor has a subcontract(s)) for specific flight operations in the Baghdad FIR (ORBB) at altitudes below FL320. The requestor may identify additional operators to the FAA at any time after the FAA issues its approval. Neither the operators listed in the original request, nor any operators the requestor subsequently seeks to add to the approval, may commence operations under the approval until the FAA issues them an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, for operations in the Baghdad FIR (ORBB) at altitudes below FL320. The approval conditions discussed below apply to all operators. Requestors should send updated lists to the email address they obtain from the Air Transportation Division by calling (202) 267-8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information appears in the FOR FURTHER INFORMATION CONTACT section of this final rule.

FAA approval of an operation under SFAR No. 77, § 91.1605, does not relieve persons subject to this SFAR of the responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificates, OpSpecs, and LOAs, as applicable. Operators must also comply with all rules and regulations of other U.S. Government departments, agencies, or instrumentalities that may apply to the proposed operation(s), including, but not limited to, regulations issued by the Transportation Security Administration.

B. Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety organization will send an approval letter to the requesting U.S. Government department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Baghdad FIR (ORBB) at altitudes below FL320; and

(b) The operator's written agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Baghdad FIR (ORBB) at altitudes below FL320.

(3) Other conditions the FAA may specify, including those the FAA might impose in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy the FAA issues under chapter 443 of title 49, U.S. Code.

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or LOA, as applicable, to the operator(s) identified in the original request and any operators the requestor subsequently adds to the approval, authorizing them to conduct the approved operation(s). In addition, as stated in paragraph (3) of this section V.B., the FAA notes that it may include additional conditions beyond those contained in the approval letter in any OpSpec or LOA

associated with a particular operator operating under this approval, as necessary in the interests of aviation safety. U.S. Government departments, agencies, and instrumentalities requesting FAA approval on behalf of entities with which they have a contract or subcontract, grant, or cooperative agreement should request a copy of the relevant OpSpec or LOA directly from the entity with which they have any of the foregoing types of arrangements, if desired.

VI. Information Regarding Petitions for Exemption

Any operations not conducted under an approval the FAA issues through the approval process set forth previously may only occur in accordance with an exemption from SFAR No. 77, § 91.1605. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those described in the approval process in the previous section. To determine whether a petition for exemption from the prohibition this SFAR establishes fulfills the standard of 14 CFR 11.81, the FAA consistently finds necessary the following information:

- The proposed operation(s), including the nature of the operation;
- The service the person(s) covered by the SFAR will provide;
- The specific locations in the Baghdad FIR (ORBB) at altitudes below FL320 where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Baghdad FIR (ORBB) at altitudes below FL320 and the airports, airfields, or landing zones at which the aircraft will take off and land;
- The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (i.e., the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures the operator will use to minimize the risks identified in this preamble to the proposed operations, to support the relief sought and demonstrate that

granting such relief would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

The FAA includes, as a condition of each such exemption it issues, a release and agreement to indemnify, as described previously.

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that may be affected by SFAR No. 77, § 91.1605. While the FAA will not permit these operations through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and in accordance with the order of preference set forth in paragraph (c) of SFAR No. 77, § 91.1605.

If a petition for exemption includes information that is sensitive for security reasons or proprietary information, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information is listed in the FOR FURTHER INFORMATION CONTACT section of this final rule.

VII. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as codified in 5 U.S.C. 603 et seq., requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96-39), as codified in 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and,

where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that Executive order. As 5 U.S.C. 553 does not require notice and comment for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, by exceeding the threshold identified previously.

A. Regulatory Evaluation

This rule prohibits U.S. civil flights in the Baghdad FIR (ORBB) at altitudes below FL320, due to the significant, continuing hazards to U.S. civil aviation detailed in the preamble of this final rule. This action also extends the expiration date of this rule for an additional two years.

The FAA acknowledges this flight prohibition might result in additional costs to some U.S. operators, such as increased fuel costs and other operational-related costs. However, the FAA expects the benefits of this action exceed the costs because it will result in the avoidance of risks of fatalities, injuries, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the Baghdad FIR (ORBB) at altitudes below FL320.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from risks to their operations in the Baghdad FIR (ORBB) at altitudes below FL320, a location outside the U.S. Therefore, the rule complies with the Trade Agreements Act of 1979.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens it imposes on the public. The FAA has determined no new requirement for information collection is associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA’s policy is to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined no ICAO Standards and Recommended Practices correspond to this regulation. The FAA finds this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure the FAA exercises its duties consistently with the obligations of the United States under international agreements.

While the FAA’s flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner’s code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition for

U.S. civil aviation. In addition, foreign air carriers and other foreign operators may choose to avoid, or be advised or directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition for U.S. civil aviation.

G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined this action is exempt pursuant to Section 2-5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8-6(c), the FAA has prepared a memorandum for the record stating the reason(s) for this determination and has placed it in the docket for this rulemaking.

VIII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132. The agency has determined this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211. The agency has determined it is not a “significant energy action” under the executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609 promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

IX. Additional Information

A. Electronic Access

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the docket for this rulemaking.

Those documents may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register’s website at <https://www.federalregister.gov> and the Government Publishing Office’s website at <https://www.govinfo.gov>. A copy may also be found at the FAA’s Regulations and Policies website at https://www.faa.gov/regulations_policies.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Interested persons must identify the docket or amendment number of this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121) (set forth as a note to 5 U.S.C. 601) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the persons listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Iraq.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

2. Amend § 91.1605 by revising paragraph (e) to read as follows:

§ 91.1605 Special Federal Aviation Regulation No. 77—Prohibition Against Certain Flights in the Baghdad Flight Information Region (FIR) (ORBB).

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(e) *Expiration.* This SFAR will remain in effect until October 26, 2024. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued in Washington, D.C., under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on or about September 22, 2022.

Billy Nolen,

Acting Administrator.

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